Crime, Justice and Indigenous Peoples

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Introduction

The articles in this issue draw on cross-national comparisons of indigenous crime and justice in three 'settler societies', Australia, Canada and New Zealand. These kindred states share a common imperial history but their geo-political, cultural and historical trajectories are sufficiently different to reveal the underlying character of neo-colonial indigenous-state relations. Despite differences in indigenous culture, the timing of contact, the 'civilizing' or assimilationist mechanisms employed and constitutional form all states share an over-reliance on penal measures as a means of regulating indigenous-state relations. Yet considerable variations in the penal experience of Aborigines are observed so that differences are often greater amongst them than between Aborigines and non-Aborigines. These anomalies in indigenous criminalization are for Tyler (this issue) not only a product of anomie but reflect variations in economic dependency, cultural resilience, ethnic fluidity and 'identity' arising from the encounter with the post-colonial state.

Given the economy of imprisonment as a means of regulating the disorder represented by the conflicts and strains of Aboriginal engagement with modernity, its deployment has been efficient in managing race conflict and cross-cultural inequalities. However, the extent to which the state can resort to policing institutions to manage the on-going encounter with indigenous people, is now subject to a pervasive (global) discourse on human rights. In 'liberal' neo-colonial states efforts to accomplish domestic de-colonization and incorporate Aborigines into the economy must accord with modern sensibilities about self-determination and 'difference'. However, 'self-determination' has proven difficult to define in practice, and "(I)t has been easier to say that 'self-determination' is not 'assimilation' than to say what it is" (Rowse 1998:205). Nevertheless, the state seeks consensual means for regulating the indigenous domain and has acquired new ideologies and orientations that accommodate cultural difference.

Co-opted customary forms of dispute resolution, equated with self-determination, animated restorative or 'new' justice approaches in indigenous communities. Although restorative justice had emerged in a wider response to the percieved crisis in the control of juvenile delinquents it draw inspiration from the colonized (for example, native American 'sentencing circles' and Maori 'family group

conferences') but are appropriations redolent of Orientalism (Blagg 1997). The notion of restorative justice relies on a re-imagined community where shaming is meaningful and a less costly means to control delinquency.

As Tauri (this issue) has noted the cherished post-war liberal goal of assimilation realised by formal legal and political equality [glossed by incorporation of indigenous cultural symbols] for indigenous people as Australian, Canadian or New Zealand citizens has not lost its cogency. The privileging of formal legal rights over cultural, social and economic rights through notions of citizenship operates to confine 'self-determination' to choice within the framework of given forms of governmentality. Self determination, when realized as restorative justice may serve to limit indigenous autonomy. Thus contemporary penal practices that incorporate alternatives to incarceration such as restorative justice or 'New Justice' are, as LaPriarie (this issue) argues, a potent means of accommodating the enduring differences between the settlers and the indigenous inhabitants. The 'New Justice' permits problems of difference to be mediated at the local level without compromising the integrity of the state or the duties of citizenship. Yet La Priairie questions whether this elaboration ("doing justice differently") amounts to little more than "responsibilization without resources".

Warfhuht, Palys and Boyce (this issue) in their account of one such programme in British Columbia, note an ever present risk to programme effectiveness was dependence on state support. Drawing on the inspiration of the Canim Lake people's Family Violence Programme they stress processes that involve a self-consciously re-imagined sense of community that interrupted dependency created by assimilation. By 'owning the problem' communities address otherwise intractable problems of family violence and sexual abuse by evoking traditional healing. The process begins with self-help, listening and the withdrawal of state agencies from a central to an adjunctive role: a process that tests the limits of who defines crime and how to respond. Homel, Lincoln and Herd (this issue) discuss the prospects of crime prevention in indigenous communities and note how little attention has been given to questions of gender and 'ethnicity' in the extant literature. Their approach informed by developmental criminology identifies relevant risk and protective factors and shows that indigenous crime has been over-determined by more conventional approaches. The key for them is also self-determination as ownership of the process and practice of community crime prevention.

For Jackson the intersection of ‘race’, class and gender in the context of the colonial legacy render the struggle to break the "cycle of violence" an especially difficult problem without the promise of restorative justice or jurisidictional autonomy Separate or autonomous self-regulation does seem an option the Canadian state [for example, Nunavut once part of the NW Territories] can contemplate within its federal structure but less likely in a centralized state such as New Zealand. For Jackson, human rights as enshrined in the Canadian Charter are the first step in mobilizing legal resources in the struggle for self-determination.

Harding (this issue) in an analysis of the aftermath of the Royal Commission into Aboriginal Deaths in Custody observes that despite reductions in Aboriginal deaths in police custody, deaths in prisons are no less frequent than before the inquiry. This arose because ‘system’ approaches to reducing the risk of prison mortality were weakened by the focus on factors particular to the excessive levels of Aboriginal custody. Thus ‘Aboriginalism’ and reliance on ‘rights’ compartmentalized solutions which required generic approaches that actually address the inadequacy of prison regimes.

The essays show that there has been a fundamental shift in the focus of criminological interest away from the indigenous ‘problem’ and a pre-occupation with the pathologies of indigenous crime to the pathologizing theories and criminalizing consequences of the welfare-punishment nexus aptly embedded welfare colonialism. No longer is the central ‘problem’ the deprived indigenous subject but the ‘settler’ state and the legacies of (post) colonialism. The subject of interest is the settlers and how they have conceptualized the indigenous [via Orientalism qua ‘Aboriginalism’] and mobilized the law to legitimate land theft and manage ‘race’ conflicts. The Aboriginal struggle to have law exercised in their interest is illustrated by Cuneen’s account of the Australian state's response to cultural genocide exposed in the ‘stolen generations’ inquiry: a practice relevant to all three settler states. Here denial of genocide takes on characteristics reminiscent of “techniques of neutralization” [Matza and Sykes 1957] which is conventionally applied to explain the ‘criminality’ of offenders who otherwise purport to respect the laws and values they violate.

References

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